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No. 774

In the Supreme Court of the United States

OCTOBER TERM, 1935

CORINNE S. KOSHLAND, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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We do not oppose the granting of a writ of certiorari in this case.

The court below held that common stock distributed by a corporation to the taxpayer as a dividend on her preferred stock is a non-taxable stock dividend within the meaning of Section 115 (f) of the Revenue Act of 1928, so that the original cost of the preferred shares is reduced by apportioning such cost between the preferred and common shares for the purpose of determining the gain upon the subsequent disposition of the preferred shares. This decision conflicts with the

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decision of the Circuit Court of Appeals for the Sixth Circuit in *Commissioner* v. *Tillotson Mfg. Co.*, 76 F. (2d) 189, wherein it was held that common stock distributed as a dividend on preferred stock is a taxable dividend, and that consequently no justification exists for adjusting the cost basis of the preferred stock. While we think the decision of the court below, which is in conformity with existing Treasury practice, is right, in view of the conflict and because it is important in the administration of the revenues that the question be settled, we do not oppose the granting of the writ.

Respectfully submitted.

STANLEY REED,
Solicitor General.

MARCH 1936.

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